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Legislative Notice

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S. 1593 — the McCain-Feingold Campaign "Reform" Bill

Calendar No. 312

S. 1593 was introduced September 16, 1999, and referred to the Committee on Rules and Administration; it was discharged from the Committee on October 8 and placed on the Calendar.

NOTEWORTHY

- There is no unanimous-consent agreement on the bill; however, there is an informal agreement to begin consideration of the bill this week.
- S. 1593 is an abbreviated version of the McCain-Feingold bill that was introduced in January of this year. Among its changes, S. 1593 drops the proposed new restrictions on "issue advocacy" which had raised strong opposition. As now constituted, S. 1593 purports to do just two major things: eliminate the use of "soft money" for Federal election activities and "codify" the Supreme Court's decision in the *Beck* case. However, the attempt to strengthen the proposal by narrowing it also contains an inherent weakness: Under S. 1593, the party committees are forbidden to accept "soft money" for Federal election activities while every other political player in the land is free to do so.
- The Republican Leadership strongly opposes S. 1593. Senator McConnell has vowed to lead the opposition to the bill and is expected to file a cloture petition related to the bill.
- The House passed a campaign "reform" bill (H.R. 417, the Shays-Meehan bill) on September 14, 1999, by a vote of 252-to-177: 54 Republicans, 197 Democrats, and one independent voted for the bill; 164 Republicans and 13 Democrats voted against the bill. The House-passed bill is considerably broader than S. 1593.
- The Senate has held more than 100 votes on campaign finance "reform" during the past dozen years (although the definition of what constitutes "reform" has fluctuated widely). In the 105th Congress alone, the Senate voted eight times on cloture on the issue. On one of those occasions, 53 Senators voted for cloture; on none of the others did more than 52 Senators vote for shutting off debate.

BILL PROVISIONS

S. 1593 has just five sections and purports to do just two major things: eliminate the use of "soft money" for Federal election activities and codify the Supreme Court's decision in the *Beck* case.

Section 1 gives the title of the bill as the "Bipartisan Campaign Reform Act of 1999".

Section 2 eliminates "soft money" for the national party committees and the national congressional campaign committees. "Soft money" is money that currently is *not* regulated by Federal election laws (regulated money is called "hard money"). Section 2 makes it unlawful for the committees and their agents to "solicit, receive, or direct to another person a contribution, donation, or transfer of funds, or [to] spend any funds, that are not subject to the limitations, prohibitions, and reporting requirements of" the Federal Election Campaign Act of 1971 (FECA), as amended, 2 U.S.C. §431 *et seq*. The prohibition applies to all entities "directly or indirectly established, financed, maintained, or controlled by a national committee of a political party. . . ."

Under current law, "soft money" contributions are not limited (by definition, such contributions simply are outside of the law's requirements), but an individual's annual aggregate contributions of "hard money" to the political committees of the national parties are limited to $20,000, 2 U.S.C. §441a(a)(1)(B). "Hard money" receipts are reported, of course, but it is important to know that "soft money" contributions to the national party committees also are reported if they aggregate $200 or more per year, 11 C.F.R. §§104.8(e) & (f). On the other hand, "soft money" contributions to other committees are *not* required to be disclosed.

S. 1593 subjects State, district, and local committees to the same ban on "soft money" whenever they spend money on "Federal election activity" which the bill defines broadly and at some length at section 2-"323(b)(2)".* In brief, "Federal election activity" means activities and communications that refer to or involve a candidate for Federal office or that take place whenever a candidate for Federal office is on the ballot.

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* "The term 'Federal election activity' means — (i) voter registration activity during the period that begins on the date that is 120 days before the date a regularly scheduled Federal election is held and ends on the date of the election; (ii) voter identification, get-out-the-vote activity, or generic campaign activity conducted in connection with an election in which a candidate for Federal office appears on the ballot (regardless of whether a candidate for State or local office also appears on the ballot); and (iii) a communication that refers to a clearly identified candidate for Federal office (regardless of whether a candidate for State or local office is also mentioned or identified) and is made for the purpose of influencing a Federal election (regardless of whether the communication is express advocacy)." S. 1593, Sec. 2-"323(b)(2)(A)", 106th Cong., 1st Sess., as introduced Sept. 16, 1999. (Subparagraph (B) lists activities that are *not* included within the definition of "Federal election activity", *i.e.*, those activities involving State and local candidates and activities *exclusively*.)

In short, McCain-Feingold will "federalize" or "nationalize" vast parts of American politics:

- A bumper sticker that names a candidate for Congress, a candidate for governor, and a candidate for sheriff is, in its entirety, a "Federal election activity". Sec. 2-"323(b)(2)(A)(iii)" & "323(b)(2)(B)(iv)".

- A get-out-the-vote drive for any election in which a candidate for Federal office appears on the ballot is, in its entirety, a "Federal election activity" regardless of who conducts the drive and regardless of how many State and local candidates also appear on the same ballot. Sec. 2-"323(b)(2)(A)(ii)".

- A billboard that says "Vote Republican" is a "Federal election activity" if it appears in connection with any election at which a candidate for Federal office appears on the ballot. Sec. 2-"323(b)(2)(A)(ii)" & "323(b)(2)(C)".

Section 2-"323(c)" of the bill provides that all costs of raising funds "that are used, in whole or in part, to pay the costs of a Federal election activity" must be paid with "hard money". Subsection (d) prohibits political committees and their agents from soliciting funds for, or making or directing any donations to, a tax-exempt organization.

Section 2-"323(e)" provides that incumbents holding Federal office and their agents, candidates (the bill does not specify that they be candidates for Federal office) and their agents, and the committees of all of the above "shall not solicit, receive, direct, transfer, or spend funds in connection with an election for Federal office" unless the funds are "hard money". Nevertheless, candidates are permitted to attend State, district, and local fund-raising events, "323(e)(3)".

Section 3 amends FECA to raise the annual aggregate contribution limit for individuals from $25,000 (2 U.S.C. §441a(a)(3)) to $30,000. The section also creates a new annual limit of $10,000 for contributions to a political committee established by a State political party. (Under current law, contributions to State political committees are limited to $5,000, which is the limit for "any other political committee" which is not a national committee, 2 U.S.C. §441a(a)(1)(C).)

Subsection 4(a) requires national political committees (and State committees if they make expenditures for "Federal election activity") to report all receipts and disbursements to the Federal Election Commission.

Subsection 4(b) eliminates the "building fund" exemption in current law, 2 U.S.C. §431(8)(B)(viii). That exemption allows a national or State party to raise money for construction or purchase of its office buildings without being restricted by FECA's limits.

Section 5 purports to codify the Supreme Court's decision in *Communications Workers of America v. Beck*, 487 U.S. 735 (1988). The bill amends Section 8 of the National Labor Relations Act, 29 U.S.C. 158, to make it an "unfair labor practice" for a labor union to fail to:

(1) notify certain employees (those who are not members of the union but who, nevertheless, pay money to the union in lieu of union dues) that they are entitled to object to the use of their payments for "political activities unrelated to collective bargaining," and

(2) if the employee files an objection, reduce the payments to eliminate that portion of the payment that is used for "political activities unrelated to collective bargaining."

This part of the bill, while often overlooked, is extraordinarily important. Republicans have been fighting for years to protect the political rights of workers who belong to a union and of workers who do not belong to a union but who nevertheless pay dues or fees to a union. The provisions of S. 1593 are not adequate to that task, however, and may be highly counterproductive.

Today's *Washington Post* reports that the AFL-CIO has committed to spend $46 million in 35 Congressional districts to help the Democrats reclaim control of the House. Much of that money is going to come from workers who would make different choices if they were able to distribute their paychecks as they, themselves, prefer. Sadly, many supporters of McCain-Feingold provisions have filibustered Republican efforts to enact a "Paycheck Protection Act" to allow workers to do just that. Passage of a "Paycheck Protection Act" would be genuine campaign *reform*.

ADMINISTRATION POSITION

We have not received an official Statement of Administration Policy (SAP); however, the Administration has supported McCain-Feingold bills in the past. On September 14, 1999, the Administration did issue a SAP in support of the Shays-Meehan bill.

COST

The Congressional Budget Office has not estimated the cost of S. 1593. Presumably, there would be some increases in the administrative costs for the Federal Election Commission and the National Labor Relations Board. It is important to remember, however, that the relevant costs of this bill cannot be counted merely in dollars.

POSSIBLE AMENDMENTS

Senator Hagel has sent out a "Dear Colleague" letter describing two amendments that he intends to offer. The first amendment would require full and open disclosure of all receipts and expenditures "by every individual and group involved in the Federal election process." The second amendment would create a "soft money" limit of $60,000 for contributions to the national party committees and triple the current limits on "hard money" contributions. Both new limits would be indexed. Other amendments can be anticipated.

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